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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 421 OF 2007

Shree Tulja Bhavani Shikshan Mandal
& anr. ... Petitioners

V/s

Shri Deshpande Subhash Vishnupanth
& ors. ... Respondents

Mr. R. S. Apte i/by Mr. Mandar Limaye for the petitioners.

Mr. A.J. Chougule for the respondent No.1.

Mr. M.H. Solkar, A.G.P. for the respondent Nos. 2 & 3.

CORAM: SMT. NISHITA MHATRE, J.

DATED: 9TH AUGUST, 2007.

P.C.:

1. The petition challenges the order of the School Tribunal dated 5.10.2006. By this order, the School Tribunal has granted reinstatement with full back wages from the date of termination of services of the respondent No.1. The Tribunal has also directed that the respondent No.1 is entitled to continuity of service and pay him incidental benefits.

2. Mr. Apte, learned advocate for the petitioner, on

instructions, states that the petitioner has no objection to reinstate the respondent No.1 with continuity of service. However, he submits that the right of the petitioner to take action against the respondent No.1 for certain acts of misconduct including allegedly conducting classes without the permission of the school authorities should be reserved. The Tribunal has granted reinstatement only because the petitioner did not hold an enquiry before taking disciplinary action in respect of these acts of misconduct alleged against the respondent No.1. The learned advocate further submits that, back wages have been awarded by the Tribunal without any basis and, therefore, the appeal should be remanded to the Tribunal to decide it afresh.

3. There is no discussion in the impugned order about the back wages payable to the respondent No.1. It is trite that reinstatement of the employee in service would not necessarily entitled him to full back wages. The Tribunal would have to consider whether the employee was gainfully employed elsewhere after being terminated from service. In the circumstances, the following order is passed:-

O R D E R

(i) The statement of the learned advocate for the petitioners that the respondent No.1 will be reinstated with continuity of service, is accepted.

(ii) The respondent No.1 shall report for duty on 21.8.2007.

(iii) The right of the petitioners to hold an enquiry in respect of certain acts of misconduct pursuant to which respondent No.1's services were terminated without holding an enquiry, is reserved.

(iv) The petitioner may hold such an enquiry in accordance with law after issuing a chargesheet to the respondent No.1.

(v) As regards the back wages, the School Tribunal will allow parties to lead evidence on this issue.

(vi) The School Tribunal will decide this issue within three months from today.

4. Petition disposed of accordingly.

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